

UNITED STATES OF AMERICA, )  
 ) Case No. 1:15-CR-00020  
 ) (RJA) (HBS)  
 )  
 Plaintiff, )  
 )  
 vs. ) September 8th, 2015  
 )  
 DAMON HUNTER, )  
 )  
 )  
 Defendant. )

APPEARANCES:

Court Reporter: MEGAN E. PELKA, RPR  
Robert H. Jackson Courthouse  
2 Niagara Square  
Buffalo, NY 14202

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1

1 THE CLERK: All rise. You may be seated. Criminal  
2 Action 2015-20A. United States vs. Damon Hunter. Plea.  
3 Counsel, please state your name and the party you represent  
4 for the record.

5 MR. DAVIS: Good morning, Your Honor. Samuel Davis  
6 on behalf of the Mr. Hunter.

7 MR. XIANG: Good morning, Your Honor. Wei Xiang for  
8 the government. Judge, we have a plea agreement the parties  
9 have executed.

10 THE COURT: That's your understanding, Mr. Davis?

11 MR. DAVIS: That's correct, sir.

12 THE COURT: All right. Would you administer the oath  
13 to Mr. Hunter?

14 (The defendant was sworn at 11:55 am.)

15 THE COURT: Mr. Hunter, you are now under oath, sir  
16 and being under oath during the course of these proceedings,  
17 I'll be asking you a number of questions. You'll have to  
18 answer those questions honestly and truthfully. If you were  
19 to give me any false answer, that false answer may be used  
20 against you in a further prosecution brought by the government  
21 on a charge of perjury or making a false statement while under  
22 oath. Do you understand that, sir?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: It's also very important that you  
25 understand what your rights are. If at any time during the

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1 course of these proceedings, there's something you do not  
2 understand, you want to ask me a question, you want to consult  
3 with your attorney, you want something more fully explained to  
4 you, you're free to do so. You're encouraged to do so. It's  
5 not important that we get this over with as quickly as  
6 possibly. What's important is that I'm satisfied that you  
7 fully understand what your rights are. Do you understand  
8 that, sir?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: It is my understanding you're here today  
11 to waive certain rights and to plead guilty to Count 1 under  
12 the terms and conditions of the plea agreement. Do you  
13 understand this charge, sir?

14 THE DEFENDANT: Yes.

15 THE COURT: Mr. Davis, you have gone over this charge  
16 with your client. Are you satisfied he understands it?

17 MR. DAVIS: Yes, I am.

18 THE COURT: Any reason for me to go through any  
19 further explanation?

20 MR. DAVIS: I don't believe so, Judge.

21 THE COURT: And how about under his terms and  
22 conditions of the plea agreement? You reviewed that with him?

23 MR. DAVIS: Yes, Judge.

24 THE COURT: And his rights under Rule 11, right to a  
25 trial, et cetera?

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1 MR. DAVIS: Yes.

2 THE COURT: Now, Mr. Hunter, you discussed this whole  
3 matter with your attorney. He's explained what your legal  
4 rights are, what your legal options are. You probably didn't  
5 like to hear what he had to tell you, but he's not there to  
6 make you feel good. He's there to be your legal advisor. And  
7 apparently based on those discussions, you're here today to  
8 waive certain rights and to plea guilty to this charge under  
9 the terms and conditions of the plea agreement. Are you fully  
10 satisfied with the advice and counsel you received from  
11 Mr. Davis?

12 THE DEFENDANT: Yes.

13 THE COURT: Any complaints?

14 THE DEFENDANT: No, sir.

15 THE COURT: All right. Let's proceed to the plea  
16 agreement.

17 MR. XIANG: The defendant Damon Hunter and the United  
18 States Attorney for the Western District of New York, herein  
19 after the government, hereby enter into a plea agreement with  
20 the terms and conditions as set out below. The defendant  
21 agrees to plead guilty to Count 1 of the indictment, charging  
22 a violation of Title 18 United States Code Section 1623(a),  
23 false declarations before a Grand Jury, for which the maximum  
24 possible sentence is a term of imprisonment of five years, a  
25 fine of \$250,000, a mandatory \$100 special assessment and a

1 term of supervised release of three years. The defendant  
2 understands that the penalties set forth in this paragraph are  
3 the maximum penalties that can be imposed by the Court at  
4 sentencing.

5 THE COURT: Do you understand that, sir?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Mr. Davis, did you explain to Mr. Hunter  
8 the importance of that paragraph?

9 MR. DAVIS: Yes, I did, Your Honor.

10 THE COURT: All right. What is the importance?

11 MR. XIANG: Paragraph 1 satisfies the requirement of  
12 Rule 11 of the Federal Rules of Criminal Procedure by  
13 notifying the defendant of the maximum penalty. The Court  
14 also must consider but is not bound by the federal sentencing  
15 guidelines. The sentencing guidelines went into effect on  
16 November 1st, 1987 and are relevant to federal offenses  
17 committed after that date.

18 The purpose of the sentencing guidelines is to  
19 establish a sentencing system in which courts will impose  
20 similar sentences for similar crimes upon defendants who are  
21 similar in ways, according to the guidelines, are relevant to  
22 sentencing. If the sentencing guideline procedure is  
23 followed, the Court would impose a sentence within a range on  
24 a sentencing table in the sentencing guidelines manual. This  
25 range would depend on the defendant's criminal conduct and the

1 defendant's criminal history.

2           The law requires the Court to consider imposing the  
3 sentence in accordance with the sentencing guideline  
4 procedure. The law permits the Court, however, to impose a  
5 reasonable sentence without adhering to the sentencing  
6 guidelines. If the Court decides to impose a sentence other  
7 than the one prescribed by the sentencing guidelines, the  
8 Court must state its reasons for doing so.

9           THE COURT: Do you understand that, sir?

10          THE DEFENDANT: Yes.

11          THE COURT: We're going to go through, Mr. Hunter,  
12 the guidelines in a few minutes. When we go through them,  
13 I'll assume you understand it because I'm sure Mr. Davis  
14 explained it to you, but if you have any questions, let's me  
15 know, okay?

16          THE DEFENDANT: Okay.

17          MR. XIANG: Paragraph 2. The defendant understands  
18 that if it's determined that the defendant had violated any  
19 terms or conditions of supervised release, the defendant may  
20 be required to serve in prison all or part of the term of  
21 supervised release up to two years without credit for time  
22 previously served on supervised release. As a consequence, in  
23 the event the defendant's sentenced to the maximum term of  
24 incarceration, a prison term imposed for a violation of  
25 supervised release may result in the defendant serving a

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1 sentence of imprisonment longer than the statutory maximum set  
2 forth in paragraph 1 of this agreement.

3 THE COURT: Do you understand that, sir?

4 THE DEFENDANT: Yes.

5 MR. XIANG: Elements and factual basis. The  
6 defendant understands the nature of the offense set forth in  
7 paragraph 1 of this agreement and understands that if this  
8 case proceeded to trial, the government would be required to  
9 prove beyond a reasonable doubt the following elements of the  
10 crimes.

11 The testimony before the Grand Jury was given while  
12 the defendant was given under oath, such testimony was false  
13 as set forth in the indictment, the matter as to which it is  
14 charged, the defendant gave false testimony were material to  
15 the issues under inquiry by the Grand Jury and such false  
16 testimony was given knowingly.

17 THE COURT: Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: Okay.

20 MR. XIANG: Factual basis. The defendant and the  
21 government agree to the following facts, which form the basis  
22 for the entry of the plea of guilty, including relevant  
23 conduct.

24 On or about the afternoon of August 30, 2012, Quincy  
25 Balance was murdered in the vicinity of Northland Avenue and

1 Stevens Avenue, Buffalo, New York. The Erie County New York  
2 medical examiner determined the cause of death to be multiple  
3 gunshot wounds. At almost the same that Balance was murdered,  
4 the defendant was standing near Balance was also shot at  
5 multiple times by a person using a firearm.

6 The defendant knew and recognized the shooter as  
7 Roderick Arrington, also known as "Ra-Ra." The defendant also  
8 knew and recognized three individuals at the shooting  
9 associated with Harrington as Marcel Worthy, a.k.a. "Cheese";  
10 Aaron Hicks, a.k.a. "Boog," a.k.a. "Boogy" and James Robs,  
11 a.k.a. "Jimmy." The defendant knew all four individuals  
12 through personal interactions with them on the East Side of  
13 Buffalo and knew that they believed the defendant and Balance  
14 were involved in the shooting murder of Walter Davidson,  
15 a.k.a. Matt, on or about August 26th, 2012, on Colonel Street,  
16 Buffalo, New York.

17 Hours after the shooting on August 30th, 2012, the  
18 defendant gave a true statement to the City of Buffalo  
19 homicide detectives detailing the circumstances of the  
20 shooting. The defendant actually described how he and Balance  
21 stopped to speak with Hicks regarding the Davidson murder, how  
22 Worthy and Robs arrived and surrounded them in separate cars  
23 and how Arrington walked up with a handgun, shot Balance until  
24 he fell and then discharged the handgun at the defendant while  
25 the defendant ran away. The defendant also truthfully



1 identified Arrington, Worthy and Robs via photographic lineup  
2 to police.

3           On or about November 14th, 2014, a Grand Jury of the  
4 United States District Court for the Western District of New  
5 York was conducting an investigation to determine whether  
6 violations of Title 18 United States Code Sections 922(g)(1),  
7 924(c) and 1959(a) had been committed during the shooting and  
8 murder of Quincy Balance and the attempted murder of the  
9 defendant on or about August 30th, 2012 in the City of  
10 Buffalo, New York.

11           It was material to said investigation to identify the  
12 person who had possessed, used and discharged the firearm  
13 during the murder of Balance and the attempted murder of the  
14 defendant as well as to identify the persons who caused the  
15 commission of and conspired to commit the aforementioned  
16 violations of federal law.

17           The defendant, while appearing as a witness under  
18 oath at a proceeding before the Grand Jury, falsely recanted  
19 his identification of Arrington as the person who killed  
20 Balance and shot at the defendant. The defendant testified  
21 that he was mistaken about Arrington being the shooter when he  
22 knew that he observed Arrington as the shooter.

23           Among other reasons for lying to the Grand Jury, the  
24 defendant was afraid of retribution from Arrington and his  
25 associates and for being labelled as a snitch if Arrington

1 were indicted based on the defendant's testimony. The  
2 defendant was also upset and not receiving any sentencing  
3 benefits in his Erie County firearm conviction for cooperating  
4 with the federal investigation.

5 THE COURT: Do you understand all that, sir?

6 THE DEFENDANT: Yes.

7 THE COURT: How would prove all this?

8 MR. XIANG: We have the statements transcribed,  
9 statements that are described in here that the defendant gave  
10 to Buffalo Police hours after the shooting. We have the  
11 photographic lineups that he's signed for and we have multiple  
12 statements he made not only to federal investigators in the  
13 year 2014 as well as recorded statements he made to other  
14 individuals in his jail calls.

15 And finally, we have a letter that the defendant  
16 wrote to Roderick Arrington for which what he executed a  
17 search warrant on Arrington's jail cell and recovered the  
18 letter describing some of the concerns that are detailed in  
19 the factual basis.

20 THE COURT: Do you understand that, sir?

21 THE DEFENDANT: Yes.

22 MR. XIANG: Sentencing guidelines. The defendant  
23 understands that the Court must consider but is not bound by  
24 the sentencing guidelines, the Sentencing Reform Act of 1984.  
25 The government and the defendant agree that guideline sections

1 2J1.3(c)(1), 2X3.1(a)(1), 2X3.1(a)(3)(a), 2E1.3(a)(2) and  
2 2A1.1(a) apply to the offensive conviction and provide for a  
3 base offense level of 30.

4 THE COURT: Do you understand that, sir?

5 THE DEFENDANT: Okay.

6 THE COURT: You saw this table with all these numbers  
7 on it?

8 THE DEFENDANT: Yes.

9 THE COURT: Yeah, this is important. You're going to  
10 end up somewhere on this table. Where you end up, those are a  
11 range of months that are being recommended to the Court as to  
12 what the sentence should be. Now, for this particular  
13 violation, the range is 97 to 121 months, but there's a  
14 statutory maximum of five years, I believe, the charge he's  
15 pleading guilty to.

16 MR. XIANG: That's correct, Your Honor.

17 THE COURT: This is a result of Mr. Davis's efforts  
18 to persuade the government to allow him to plea to a lesser  
19 charge.

20 MR. XIANG: Well, the Count 2 would have a higher  
21 maximum of 20 years and it would encompass more than just the  
22 range, but, yes, this is part of the negotiations that we're  
23 allowing the defendant to plea only to Count I.

24 THE COURT: If he had gone to trial and if he had  
25 been convicted, he'd be facing a lot more time here I assume.

1 MR. XIANG: That's right. The statutory maximum of  
2 20 plus 5 years.

3 THE COURT: Do you understand all that, sir?

4 THE DEFENDANT: Yes.

5 THE COURT: Okay. This is the result of your  
6 attorney being able to persuade the government to give you a  
7 plea to this charge rather than go to trial on the indictment.  
8 Because if you went to trial on the indictment, the penalty  
9 provisions, if you were convicted, would be much substantially  
10 higher. Do you understand that?

11 THE DEFENDANT: Okay.

12 THE COURT: Okay.

13 MR. XIANG: Acceptance of responsibility. At  
14 sentencing, the government agrees not to oppose the  
15 recommendation that the Court apply the two-level downward  
16 adjustment of guideline sections 3E1.1(a), acceptance of  
17 responsibility, and further agrees to move the Court to apply  
18 the additional one level downward adjustment of guideline  
19 sections 3E1.1(b), which would result in a total offense level  
20 of 27.

21 Criminal history category. It is the understanding  
22 of the government and the defendant that the defendant's  
23 criminal history category is 4. The defendant understands  
24 that if the defendant is sentenced for or convicted of any  
25 other charges prior to sentencing in this action, the

1 defendant's criminal history category may increase. The  
2 defendant understands that the defendant has no right to  
3 withdraw the plea of guilty based on the Court's determination  
4 of the defendant's criminal history category.

5 THE COURT: Do you understand that, sir?

6 THE DEFENDANT: Yeah, I understand.

7 THE COURT: Okay.

8 MR. XIANG: Guidelines application, calculations and  
9 impact. It is the understanding of the government and the  
10 defendant that with a total offense level of 27 and criminal  
11 history category of 4 and taking into account the statutory  
12 maximum penalty, the defendant sentencing range will be a term  
13 of imprisonment of 60 months, a fine of 12,500 to \$125,000 and  
14 a period of supervised release of one to three years.  
15 Notwithstanding this, the defendant understands that at  
16 sentencing, the defendant is subject to the maximum penalty  
17 set forth in paragraph 1 of this agreement.

18 THE COURT: Do you understand that, sir?

19 THE DEFENDANT: Yes.

20 THE COURT: Okay.

21 MR. XIANG: The government and the defendant agree to  
22 the sentencing guidelines calculations set forth in this  
23 agreement and neither party would advocate or recommend the  
24 application of any other guideline or move for any guideline  
25 departure or move for or recommend a sentence outside the

1 guideline, except as specifically set forth in this agreement.  
2 A breach of this paragraph by one party will relieve the other  
3 party of any agreements made in this plea agreement with  
4 respect to sentencing motions and recommendations. A breach  
5 of this paragraph by the defendant shall also relieve the  
6 government from any agreement to dismiss or not pursue  
7 additional charges.

8           The government and defendant agree that as the  
9 defendant is presently serving an undischarged State term of  
10 imprisonment under Erie County Court Case No. 01883-2013. The  
11 defendant specifically reserves the right to recommend that  
12 the sentence for the instant offense be imposed concurrently  
13 to the remainder of the undischarged State term of  
14 imprisonment. The defendant understands, however, that the  
15 government will oppose such a recommendation and that the  
16 Court is not bound to sentence the defendant concurrently with  
17 the undischarged State term of imprisonment.

18           THE COURT: Do you understand that, sir?

19           THE DEFENDANT: Yes.

20           THE COURT: Okay.

21           MR. XIANG: The defendant understands that the Court  
22 is not bound to accept any sentencing guidelines calculations  
23 set forth in this agreement and the defendant will not be  
24 entitled to withdraw the plea of guilty based on the sentence  
25 imposed by Court.

1 THE COURT: Do you understand that, sir?

2 THE DEFENDANT: Yes.

3 MR. XIANG: Next is statute of limitations.

4 THE COURT: Any reason to read that section,  
5 Mr. Davis?

6 MR. DAVIS: No, Judge.

7 THE COURT: How about government rights and  
8 reservations?

9 MR. DAVIS: No, Your Honor. We understand those.

10 THE COURT: All right. Let's go right to the appeals  
11 section.

12 MR. XIANG: The defendant understands that Title 18  
13 United States Code Section 3742 affords the defendant a  
14 limited right to appeal the sentence imposed. The defendant,  
15 however, knowingly waives the right to appeal and collaterally  
16 attack any component of a sentence imposed by the Court, which  
17 falls within or is less than the sentencing range for  
18 imprisonment, a fine and supervised release set forth in  
19 section 3, paragraph 9 above, notwithstanding the manner in  
20 which the Court determines the sentence.

21 In the event of an appeal of the defendant's sentence  
22 by the government, the defendant reserves the right to argue  
23 the correctness of the defendant's sentence. The defendant  
24 understands that by agreeing not to collaterally attack the  
25 sentence, the defendant is waiving the right to challenge the

1 sentence in the event that in the future the defendant becomes  
2 aware of previously unknown facts or a change in the law which  
3 the defendant believes would justify a decrease in the  
4 defendant's sentence.

5           The government waives its right to appeal any  
6 component of a sentence imposed by the Court which falls  
7 within or is greater than the sentencing range for  
8 imprisonment, a fine and supervised release set forth in  
9 section 3, paragraph 9 above, notwithstanding the manner in  
10 which the Court determines the sentence. However, in the  
11 event of an appeal from the defendant's sentence by the  
12 defendant, the government reserves its right to argue the  
13 correctness of the defendant's sentence.

14           The government and the defendant agree not to appeal  
15 the imposition of the sentence of imprisonment concurrently,  
16 partially concurrently, consecutively or partially  
17 consecutively with any undischarged State term of imprisonment  
18 under Erie County court Case No. 10883-2013 that the defendant  
19 is currently serving.

20           THE COURT: Do you understand that, sir?

21           THE DEFENDANT: Yes.

22           MR. XIANG: This plea agreement represents the total  
23 agreement between the defendant Damon Hunter and the  
24 government. There are no promises made by anyone other than  
25 those contained in this agreement. This agreement supercedes



1 any other agreements, written or oral, entered into between  
2 the government and the defendant. It is signed by myself on  
3 behalf of the government and dated today.

4 Next it reads: I, Damon Hunter, have read this  
5 agreement, which consists of nine pages. I have had full  
6 opportunity to discuss this agreement with my attorney, Samuel  
7 P. Davis. I agree that it represents the total agreement  
8 reached between myself and the government. No promises or  
9 representations have been made to me other than what is  
10 contained in this agreement. I understand all of the  
11 consequences of my plea of guilty. I fully agree with the  
12 contents of this agreement. I signed this agreement  
13 voluntarily and of my own free will.

14 It's signed by the defendant and by his counsel, both  
15 dated today.

16 THE COURT: Now, Mr. Hunter, we've gone over the  
17 agreement in court. You indicated you understand it. You  
18 signed it indicating you understand it. Your attorney says  
19 he's gone over it with you. He's satisfied you understand it.  
20 Any questions, sir?

21 THE DEFENDANT: Your Honor?

22 THE COURT: Any questions --

23 THE DEFENDANT: No, sir.

24 THE COURT: -- about the agreement? These are all  
25 the terms and conditions of the plea agreement, which we just

1 read here in court, is that true?

2 THE DEFENDANT: Yes.

3 THE COURT: Okay. No one made any other promises to  
4 you, have they?

5 THE DEFENDANT: No.

6 THE COURT: How old are you, sir?

7 THE DEFENDANT: Twenty-five.

8 THE COURT: Where were you born and raised?

9 THE DEFENDANT: Buffalo, New York.

10 THE COURT: Where did you go to school, Mr. Hunter?

11 THE DEFENDANT: High school?

12 THE COURT: Yeah.

13 THE DEFENDANT: East High School and Maritime.

14 THE COURT: Did you graduate?

15 THE DEFENDANT: No.

16 THE COURT: Okay. Why didn't you graduate?

17 THE DEFENDANT: Just kept getting kicked out and then  
18 went to Maritime. They said that didn't want me back anymore.

19 THE COURT: Okay. Are you married?

20 THE DEFENDANT: No.

21 THE COURT: Have any children?

22 THE DEFENDANT: No.

23 THE COURT: What kind of work have you done over the  
24 years?

25 THE DEFENDANT: I've had a handful of jobs. It was

1 like, all restaurant jobs like Pizza Hut. I work at Holiday  
2 Candy and Niagara Lubricant.

3 THE COURT: Okay. What kind of hobbies do you have?  
4 What do you like to do?

5 THE DEFENDANT: Play chess.

6 THE COURT: Do what, sir?

7 THE DEFENDANT: I play chess, you know, the board  
8 game.

9 THE COURT: Okay.

10 THE DEFENDANT: Chess. I like to grill food.

11 THE COURT: Grill food?

12 THE DEFENDANT: Yeah.

13 THE COURT: Barbecue?

14 THE DEFENDANT: Like barbecue, yeah.

15 THE COURT: Are you any good at it?

16 THE DEFENDANT: Yeah.

17 THE COURT: What did you barbecue that's so good?  
18 Ribs?

19 THE DEFENDANT: Ribs.

20 THE COURT: Do you marinate them specially or what do  
21 you do with them.

22 THE DEFENDANT: I don't marinate them. I just --

23 THE COURT: Just put them on the grill?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you have a special rub or anything?

1 THE DEFENDANT: No. I just season them with up like,  
2 with some pepper and stuff.

3 THE COURT: Okay. People like them?

4 THE DEFENDANT: Yes.

5 THE COURT: Okay.

6 THE DEFENDANT: My brother likes them, so --

7 THE COURT: All right. Are you seeing a doctor for  
8 any reason?

9 THE DEFENDANT: No.

10 THE COURT: Are you seeing a psychiatrist?

11 THE DEFENDANT: No.

12 THE COURT: Have you ever been hospitalized or  
13 treated for a narcotic addiction?

14 THE DEFENDANT: No.

15 THE COURT: Are you today under the influence of any  
16 drug, medicine or alcohol?

17 THE DEFENDANT: No.

18 THE COURT: Mr. Davis, your client is obviously  
19 intelligent, alert. He's focused, clearly understands  
20 everything I'm saying, does not appear to be under the  
21 influence of any drug, medicine or alcohol. Is that  
22 consistent with your observations?

23 MR. DAVIS: Yes, Your Honor.

24 THE COURT: Now, Mr. Hunter, is anyone forcing you to  
25 plead guilty?

1 THE DEFENDANT: No.

2 THE COURT: Anyone threaten you in any way?

3 THE DEFENDANT: No.

4 THE COURT: Your willingness to plead guilty, you  
5 discussed it with your lawyer. He discussed it with the  
6 government's lawyer. Based on his discussions, this plea  
7 agreement was prepared. That's basically how this all came  
8 about. True?

9 THE DEFENDANT: Yes.

10 THE COURT: Now, do you understand the offense which  
11 you are pleading guilty to is a serious offense and if it's  
12 accepted by the Court, you'll be found guilty and there will  
13 be no appeal as long as the sentence is consistent with the  
14 terms and conditions of the plea agreement. Being found  
15 guilty of this offense may deprive you of certain rights. You  
16 may lose the right to vote, the right to hold public office,  
17 the right to serve a jury, right to possess a firearm, certain  
18 civil service-type jobs like police officer. You may be  
19 deprived of those rights. Do you understand that, sir?

20 THE DEFENDANT: Yeah. I didn't know that until right  
21 now, but I understand that, though.

22 THE COURT: Okay. And do you understand all the  
23 possible consequences? We talked about paragraph 1 of the  
24 plea agreement. We talked about the guideline. We talked  
25 about the possible cost, the possible fine, the \$100 penalty

1 assessment. Do you understand all that, sir?

2 THE DEFENDANT: Yes.

3 THE COURT: Do you understand, sir, that you have a  
4 right to plead not guilty, as you've done up to the present  
5 time and you have a right to persist to that plea of not  
6 guilty and you have a right to a trial, a fair trial in this  
7 courtroom where a jury of 12 people will decide whether you're  
8 guilty or not guilty based upon the evidence and the law.

9 First of all, I'd be the judge. And to the best of  
10 my ability, I would conduct a trial fairly and impartially. I  
11 have no interest in this case other than to make sure you and  
12 the government get a fair trial. In selecting the jury, we  
13 would have in the courtroom somewhere around 50 to 75 people.  
14 Who are these people? People who live in this area, in this  
15 district.

16 We would have in here probably somewhere around  
17 maybe, as I said, 50 to 75 people. They would be in the  
18 courtroom. You'd be in the courtroom. Your lawyer would be  
19 with you. They'd all be put under oath. They'd answer all my  
20 questions honestly and truthfully.

21 If there were anyone in that group that would not be  
22 fair and impartial, that person would be removed. And you'd  
23 have input on that and say, hey, Judge, that one guy, he's  
24 already made up his mind. And if I agree with you, no reason  
25 why I wouldn't if it makes sense, that person would be gone.

1           Also, you can remove up to ten people for any reason  
2 you want other than race or gender. You couldn't say, well, I  
3 don't want any women on my jury, or don't want a particular  
4 race of people. You can't discriminate in that sense. Do you  
5 understand that, sir?

6           THE DEFENDANT: Yes.

7           THE COURT: And Mr. Davis will present you. You have  
8 the right to hear and see all the witnesses and have Mr. Davis  
9 cross-examine the witnesses. And after the government's  
10 rested its case, you could provide a defense. You can  
11 subpoena witnesses or any records that are relevant to the  
12 trial issues, but you don't have to do anything. You're  
13 presumed not guilty. You don't have to prove a thing. The  
14 burden is on the government to convince all 12 jurors that  
15 you're guilty beyond a reasonable doubt. Do you understand  
16 that, sir?

17           THE DEFENDANT: Yes.

18           THE COURT: Where you can sit there and you say, you  
19 prove it. I don't have to do a thing. And by entering a plea  
20 of guilty, if it's accepted by the Court, there will be no  
21 trial, you'll have waived your right to trial and all the  
22 other rights. Do you understand that?

23           THE DEFENDANT: Yes, sir.

24           THE COURT: As I said, the government has to prove  
25 beyond a reasonable doubt to the satisfaction of all 12 jurors

1 that you're guilty. Do you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: Counsel, is there any reason why I should  
4 not accept the plea?

5 MR. XIANG: No, Your Honor.

6 THE COURT: You're both satisfied I've complied with  
7 all requirements of Rule 11?

8 MR. DAVIS: Yes, Your Honor.

9 MR. XIANG: Yes, Your Honor.

10 THE COURT: All right. How do you plead to count --  
11 is it 2 or --

12 MR. XIANG: It's Count 1.

13 THE COURT: Count 1. How do you plead to Count 1,  
14 sir, guilty or not guilty?

15 THE DEFENDANT: Guilty.

16 THE COURT: It's the finding of the Court that the  
17 defendant is fully competent and cable of entering an informed  
18 plea. His plea of guilty is a knowing and voluntary plea  
19 supported by an independent basis of facts containing each of  
20 the essential elements of the offense charged. This plea is,  
21 therefore, accepted and he's now judged guilty of Count 1.

22 Sentencing will be scheduled for December 21st at  
23 12:30. A written presentence report will be prepared by the  
24 probation office to assist the Court in imposing sentence.  
25 Mr. Hunter, you'll be afforded an opportunity to meet with the



1 probation officer to provide information in the report. Your  
2 attorney should be present during the interview. You'll  
3 receive a copy of the report as well as your attorney. You  
4 will file any additional information or any motions or  
5 memorandum that are consistent with the terms and conditions  
6 of the plea agreement and both you and your attorney will have  
7 an opportunity to address the Court at the time of sentencing  
8 and say anything you wish to say in mitigation of the  
9 sentence. The scheduling for filing all papers will be as  
10 follows.

11 THE CLERK: The initial presentence report will be  
12 due November 6th. The statement of the parties with respect  
13 to sentencing factors and objections, if any and motions, if  
14 any, will be due November 30th. The responses to any  
15 objections or responses to any motions will be due  
16 December 7th. A sentencing memorandum and/or character  
17 letters in support of the defendant will be due December 7th.

18 Any motion to adjourn the sentencing date will be due  
19 by December 11th. The final presentence report will be due  
20 December 14th and any character letters and or a sentencing  
21 memorandum -- excuse me. The government's response to any  
22 legal argument in defendant's sentence memorandum will be due  
23 December 14th.

24 THE COURT: All right. Any further?

25 MR. XIANG: Not from the government, Judge. In terms

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25

1 of where Mr. Hunter will be housed, would he still go back  
2 or -- I just want to make sure his position is clear on the  
3 record.

4 THE COURT: Mr. Davis, what do you want?

5 MR. DAVIS: Judge, we want him turned back to State  
6 custody. It has come to our attention today that the  
7 individual contemplated in this agreement has been indicted on  
8 murder charges and he's currently, I believe, at the Niagara  
9 County Jail. So, we want him back in State custody for that  
10 reason alone.

11 THE COURT: All right. He'll remain in State  
12 custody.

13 MR. DAVIS: Thank you, Judge.

14 MARSHAL: Mr. Davis, is there any way that he can see  
15 the probation office today?

16 THE COURT: Yeah, that might be a good idea. If you  
17 have any problems, we'll notify the probation officer.  
18 Mr. Davis, you're available, aren't you?

19 MR. DAVIS: I can be.

20 THE COURT: That's very good. If you have any  
21 problems, we'll go to find a probation -- might as well do it  
22 today. It's fresh in your mind. Mr. Hunter is here and  
23 rather than, you know -- I don't know where he's going to be  
24 in the State custody. This way, you get it all done.

25 MR. DAVIS: I understand, Judge.

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THE COURT: Okay. Thank you.

(Proceedings ended.)

\* \* \* \* \*

I certify that the foregoing is a  
correct transcription of the proceedings  
recorded by me in this matter.

s/ Megan E. Pelka, RPR

Court Reporter,